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No. 91-925

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

GREATER SOUTH SUBURBAN BOARD OF REALTORS, an Illinois not-for-profit corporation, and NATIONAL ASSOCIATION OF REALTORS, an Illinois not-for-profit corporation,

Petitioners,

v.

CITY OF BLUE ISLAND, VILLAGE OF CALUMET PARK, CITY OF COUNTRY CLUB HILLS, VILLAGE OF GLENWOOD, VILLAGE OF HAZEL CREST, VILLAGE OF MATTESON, VILLAGE OF PARK FOREST, VILLAGE OF RICHTON PARK, VILLAGE OF UNIVERSITY PARK, and SOUTH SUBURBAN HOUSING CENTER, an Illinois not-for-profit corporation,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION OF RESPONDENT SOUTH SUBURBAN HOUSING CENTER

ALEXANDER POLIKOFF
Counsel of Record
ROBERT L. JONES, JR.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 East Monroe Street, Suite 212
Chicago, Illinois 60603
(312) 641-5570

Attorneys for Respondent
South Suburban Housing Center

Of Counsel:

ROBERT C. JOHNSON
SONNENSCHEIN NATH & ROSENTHAL
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

QUESTIONS PRESENTED

I. Is *certiorari* appropriate for an issue which no federal court, including the lower courts in this case, has ever decided?

II. Does an organization of real estate brokers have third-party standing to assert the equal protection rights of minority homeseekers absent evidence that such homeseekers are unable to advance their own interests and in spite of extensive evidence of racial discrimination by real estate brokers?

III. Is a municipality's approval of a real estate marketing plan that is proposed, drafted, implemented and funded entirely by private parties sufficient to render those parties state actors and thereby open the door to an equal protection claim under 42 U.S.C. Section 1983?

IV. Does a real estate marketing plan designed to attract members of all racial groups to available housing, which does not restrict or limit any racial group's access to or information about available housing, violate the Equal Protection Clause merely because it is race-conscious?

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BRIEF IN OPPOSITION OF RESPONDENT SOUTH SUBURBAN HOUSING CENTER

The Petition for Writ of Certiorari presents four questions, only the fourth of which directly concerns Respondent South Suburban Housing Center (the "Housing Center" or the "Center"), a private, not-for-profit fair housing agency:[1] the constitutionality of the affirmative marketing plan ("AMP") developed by the Housing Center for the sale of its three homes on Apache Street in Park Forest, Illinois. (The AMP is reproduced in the appendix to this Brief.) This Brief in Opposition addresses only that question. The Housing Center respectfully submits that, as it relates to that question, the Petition for Writ of Certiorari should be denied.

RESTATEMENT OF THE CASE

Through material omissions and several misstatements the Petition so distorts the facts as to necessitate this Restatement.

Two omissions deserve special note. First, the Petitioners ("the Realtors") fail to acknowledge that, in ruling that the AMP complies with the Fair Housing Act, the District Court made findings of fact (affirmed by the Court of Appeals) that directly contradict the assertions in the Petition on which the Realtors base their Section 1983 equal protection claim. Whereas the Petition asserts that the AMP "manipulate[s] the housing decisions of prospective residents" (p. 15), "preserve[s] the racial balance preferred by the white majority" (p. 27), provides for "preferential treatment of white homeseekers" (p. 28), and restricts housing information to black homeseekers (p. 13), the District Court found that there was "no evidence at all" that

[1] The Housing Center, an Illinois not-for-profit corporation, has no parent or subsidiary.

the broker, Motluck, in any way reduced his efforts to market the Apache Street properties to blacks (NAR App., p. 75),[2] that there was "no evidence at all" that the Housing Center intended Motluck to do so (*id.*), that "[t]here was no evidence presented" that the purpose of any Center activity was to restrict the access of any racial group to housing, "manipulate choice, or otherwise impose a quota on any racial group" (*id.* at 95), that the Realtors "failed to show" that the effect of any Center activity was to restrict minorities' access to housing (*id.* at 98), and that the Realtors "offered no evidence" that the Center denied housing to anyone or "in any way" restricted or limited anyone's housing choice (*id.* at 101). In affirming the District Court, the Court of Appeals stated:

> "[The Housing Center's] affirmative marketing plan in no way deters black home buyers from pursuing their interest in the Apache Street homes; it merely creates additional competition in the housing market." (NAR App., p. 28.)

Second, the Realtors fail to acknowledge that the AMP is an "ordinary and traditional" affirmative marketing plan of the type mandated in regulations and handbooks of the United States Department of Housing and Urban Development ("HUD") since 1972. (Tr. 1240-43, 1249-50, K. Williams.) As shown below, HUD has for twenty years required owners of federally subsidized housing, and encouraged others (including builders, real estate brokers and landlords), to carry out such affirmative marketing, including special outreach to white homeseekers where appropriate; numerous state and local governments likewise require or encourage affirmative marketing. Thus, the Apache Street

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[2] The Appendix to the Petition for Certiorari will be cited as "NAR App., p. ____." The appendix to this brief will be cited as "HC App., p. ____."

AMP is part of a venerable national tradition of affirmative marketing.

In this context we correct or supplement the Statement of Facts in several additional areas.

What Is Affirmative Marketing?

Affirmative marketing means taking special steps to provide information about available housing to persons of racial groups who, absent such efforts, would be unlikely to know of the availability of, or feel welcome to apply for, the homes or apartments being offered. (NAR App., pp. 73, 93-95; *see* HUD's Affirmative Fair Housing Marketing Regulations, 24 CFR §200.600 et seq., PX51,[3] and implementing Handbooks, PX21 and PX65.) Such steps are taken in addition to, and without curtailing, normal marketing activities. (NAR App., p. 99.) They consist of advertising in selected media or locations, and providing relevant information through local organizations such as churches, labor unions, employers, and the like. (PX65, Appendix 4, p. 3.) The purpose is to assure that persons normally not likely to apply for the housing being marketed, because of existing neighborhood racial or ethnic patterns or other factors, know about the housing, feel welcome to apply, and have the opportunity to buy or rent. (*Id.*) Among other things, such marketing involves efforts to attract whites to racially integrated areas as well as blacks to racially segregated white areas. (NAR App., p. 69.)

Affirmative marketing, which thus broadens—and does not limit—housing choices, is quite distinct from "affirm-

[3] Plaintiffs' exhibits in the trial court are referred to as "PX ____"; the Realtors' exhibits as "DX ____"; and the Municipalities' exhibits as "MX ____."

ative action" programs that may limit choice. The Court of Appeals explained the fundamental difference:

> "In contrast to the subordination of the goal of equal housing opportunity to the goal of integration presented by the facts in *Starrett City* and *Charlottesville*, the Realtors' challenge to the Apache Street affirmative marketing plan presents the question of whether a real estate organization may engage in limited race conscious marketing which does not exclude minorities from housing opportunities. Thus, we are not dealing with conflicting goals, for the affirmative marketing plan furthers the goal of integration while providing equal opportunities to all." (NAR App., pp. 26-27.)

HUD emphasized the non-burdensome and nondiscriminatory nature of affirmative marketing when it stated, in a recent review of the fair housing programs of one of the respondent municipalities in this case, that programs which ensure that:

> "blacks may be fully informed of housing opportunities in those sections of the city where blacks are least concentrated, and whites may be fully informed of housing opportunities in those sections of the city where whites are least concentrated . . . is patently neither discriminatory nor a violation of Title VIII and there is not the slightest implication that any information regarding housing opportunities may be denied." 53 Fed. Reg. 26,318 (1988) (citation omitted).

HUD initiated affirmative marketing in 1972 when it issued its Affirmative Fair Housing Marketing Regulations (the "AFHM Regulations," PX51, 24 CFR §200.600 et seq.). Those regulations, which have been in effect continuously since their issuance, mandate that private and governmental participants in various federal housing programs shall:

> "carry out an affirmative program to attract buyers or tenants, regardless of sex, of all minority and ma-

> jority groups to the housing for . . . sale or rental." (PX51, §200.620(a).)

See, e.g., 24 CFR §§880.601(a), 881.601(a), 882.111 and 883.312. HUD's first Handbook implementing the AFHM Regulations instructed applicants to:

> "State which group(s), in your judgment, are normally *not* likely to apply for the housing without special outreach because of factors such as existing neighborhood racial or ethnic patterns, price, and other factors." (PX21, Appendix 2, p. 1.)

The instructions further stated:

> "The [affirmative marketing] program should include efforts to reach those persons who traditionally would not have been expected to apply for the housing. For instance, for housing in a white suburban area, special steps may be needed to make its availability known to minorities; similarly, if the housing is located in an area of minority concentration, special steps may be needed to make its availability known to whites." (*Id.* at 3.)

Subsequent Handbooks have been substantially similar. (*See* PX65.) Pursuant to the AFHM Regulations and Handbooks, thousands of affirmative marketing plans or programs have been implemented involving special outreach to both blacks and whites. (Tr. 7553, K. Williams.)

Affirmative marketing has also been widely employed in federal, state and local government programs not subject to the AFHM regulations, and in the private sector. For example, HUD has encouraged voluntary affirmative marketing in the private housing market through voluntary affirmative marketing agreements ("VAMAs") with HUD. HUD's VAMA with the National Association of Homebuilders, whose members are responsible for building approximately 75% of the new single-family homes in the country (Tr. 7562, K. Williams), provides:

> "Each *Builder* shall direct a substantial part of its marketing activity to those groups which are not likely to seek housing marketed by the Builder without special outreach: i.e., to racial minority groups for housing in predominantly non-minority areas, and to racial majority groups for housing in integrated areas." (PX66, p. 4, §4(d).)[4]

State and local government agencies have also required, authorized or encouraged affirmative marketing to both whites and minorities. For example, the Illinois General Assembly has specified that units of local government may make:

> "special outreach efforts to inform members of minority groups of housing opportunities available in areas of majority white concentration and make similar efforts to inform the majority white population of available housing opportunities located in areas of minority concentration." (24 *Ill. Rev. Stat.* §11-11.1-1; 68 *Ill. Rev. Stat.* §7-108(D).)

The Apache Street Affirmative Marketing Plan

To address the "ongoing problem" of blight caused by vacant and abandoned homes, Park Forest in 1982 began a program of acquiring such homes, rehabilitating and reselling them. (NAR App., p. 72.) The ordinance creating the program did not mention (much less require) affirmative marketing. (PX 12.) Pursuant to that program Park Forest purchased the vacant homes at 9, 15 and 26 Apache Street. (NAR App., p. 72.) In a public notice it then

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[4] A VAMA has also been entered into between HUD and NAR (the "HUD/NAR VAMA"). The HUD/NAR VAMA neither requires nor prohibits race-conscious affirmative marketing. (PX48, pp. 21-26; Tr. 2331, North.) HUD proposed that the agreement be amended to require such marketing, but NAR did not agree to the proposed amendment. (PX50; Tr. 3435-37, North.)

sought bidders to purchase, rehabilitate and resell the three homes. (PX13.) The notice did not mention affirmative marketing. (*Id.*)

The Housing Center submitted a proposal for all three homes. Based on its analysis of various data, the Center determined that without special outreach efforts few white homeseekers would be attracted to the homes. (NAR App., p. 73.) Consequently, the Housing Center's proposal included affirmative marketing. On November 1, 1982, the Park Forest Board of Trustees voted to accept the Center's proposal, and the Center then bought the homes and began rehabilitation. (*Id.*)

Soon thereafter the Housing Center listed the homes with real estate broker Motluck, who agreed to affirmatively market them. (NAR App., p. 73.) The Housing Center and Motluck jointly developed an affirmative marketing plan that was incorporated into the listing agreements. (*Id.*) The agreements were then submitted to the Park Forest village manager, who reviewed and approved them as consistent with the Housing Center's proposal. (NAR App., p. 74.)

The Apache Street AMP was an "ordinary and traditional" plan of the type prescribed by HUD's regulations. (Tr. 1240-43, 1249-50, K. Williams.) It provided that Motluck was to use his "best efforts to attract minority and majority persons" to the Apache Street homes, and to that end conduct special outreach to whites by advertising in newspapers with a predominantly white circulation and distributing information to rental developments and employers where whites could be reached. (HC App., p. 1.)

The AMP required Motluck to provide all of his clients with a full range of housing options throughout the South Suburban area, and specifically to "assure that each client is informed about available dwellings in neighborhoods in

which persons of the client's race are not likely to be attracted without special outreach efforts." (HC App., p. 2.) It did not provide for or permit "preferential treatment" of white homeseekers as the Realtors assert. (Pet., p. 28.) To the contrary, the plan forbade "any action which prohibits, restricts, narrows or limits the housing choice of any client on the basis of race." (HC App., p. 2; NAR App., p. 73.)[5]

The Housing Center's purpose in entering into the Apache Street listings, as the District Court found, was not to decrease or restrict black traffic but to add "white traffic to the properties in addition to the black traffic." (NAR App., p. 93.) The District Court said there was no evidence at all that the Center intended Motluck to reduce, or that Motluck in any way did reduce, his efforts to market the Apache Street properties to blacks. (*Id.* at 75.) The evidence was that special outreach to whites was in addition to Motluck's "normal advertising" for the Apache Street homes. (Tr. 326, Klepper.) Motluck's records showed that of 27 homeseekers, 25 were black. (PX41.)

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[5] The Realtors refer to training materials that they say "instructed Realtor Motluck's sales agents not to tell blacks about the Apache Street homes unless asked about them specifically." (Pet., p. 13.) In fact, (1) the cited exhibit was never used in training because the Housing Center's director found it was "incorrect" (Tr. 1042); (2) it contains no such statement about the Apache Street homes (DX62); and (3) there is no evidence that Motluck's agents were ever so instructed. To the contrary, the corrected training materials that *were* used instructed Motluck's agents that black homeseekers who expressed no preference for a particular area should be offered listings in both integrated neighborhoods (which include Apache Street) and predominantly white neighborhoods. (PX 27.)

Park Forest's Non-Participation In The Initiation And Implementation Of The Apache Street Affirmative Marketing Plan

The Realtors state that the Apache Street AMP was "enacted by Park Forest" (Pet., p. 27), quoting testimony of former Park Forest Village President Ron Bean (Pet., p. 12) that may be read as mistakenly suggesting that Park Forest initiated the AMP. The quotations are excerpted from lengthy narrative responses to questions not about who initiated the affirmative marketing, but rather about Park Forest's views concerning demographics on Apache Street. (Tr. 795-97, Bean.)

When Bean was asked specifically about the respective roles of the Housing Center and Park Forest, he testified: (1) the proposal for affirmative marketing came from the Housing Center in its bid to purchase the Apache Street homes (Tr. 711-12); (2) the details of the AMP were developed entirely by the Housing Center and Motluck (Tr. 688, 699, 700, 713); and (3) the AMP was never presented to or approved by the Park Forest Board of Trustees. (Tr. 687.)

It is undisputed that the AMP was to be implemented entirely by Motluck. (NAR App., pp. 73-74.) There is no evidence that Park Forest provided any funding for those implementation efforts. Moreover, in Proposed Findings of Fact to the District Court, the Realtors admitted that the Village Manager's approval of the AMP was done "without consultation or authorization from the Park Forest board of trustees" and "did not convey any judgment on the substance of the affirmative marketing agreement; it was merely an acknowledgment . . . that the plan called for affirmative marketing, as the Center's proposal indi-

cated that it would." (NAR and GSSBR's Proposed Findings of Fact, p. 29.)[6]

In sum, as the Realtors' Proposed Findings of Fact conceded,[7] Park Forest's only role in the Apache Street AMP was to approve a plan that was developed and proposed, and was to be implemented and funded, by the Housing Center and Motluck.

The Housing Center's Efforts To Open Housing Opportunities For Black Homeseekers

The Realtors portray the Housing Center as devoted primarily to attracting white homeseekers to the South Suburbs. (Pet., pp. 3, 13-14.) In fact, the District Court found that one of the Center's primary purposes is to promote open housing to all regardless of race and that the Center's testing and litigation activities had been "designed to 'open up' housing options and combat discrimination *particularly with respect to blacks.*" (NAR App., pp. 65, 92, emphasis added.)

The Housing Center's board and staff have "always been interracial." (Tr. 184, Klepper.) During the first two or three years of the Center's existence, its activities were designed primarily "to help minority families make

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[6] The Housing Center/Park Forest "contract" consisted of the Housing Center's proposal and Park Forest's acceptance of that proposal by resolution; the parties did not negotiate or execute a separate document.

[7] The Realtors' Proposed Findings of Fact stated that (1) "SSHC had already decided to employ special outreach to whites by the time it submitted its proposal to Park Forest"; (2) "Park Forest did not hold any hearings or make any legislative findings" regarding the need for affirmative marketing on Apache Street; (3) "The Park Forest resolutions authorizing the sale of the Apache Street homes to SSHC do not authorize or mandate affirmative marketing for the properties"; and (4) "SSHC and BPI drafted the Apache Street Affirmative Marketing Plan." (NAR and GSSBR's Proposed Findings of Facts, pp. 28-29.)

open housing moves" in the South Suburbs. (Tr. 187-88, Klepper.) Even after the Housing Center broadened its activities in 1978 to include "encouraging whites to invest in racially diverse communities" (Tr. 201, Klepper), it expanded its enforcement activities on behalf of minority homeseekers, who continued to comprise fully two-thirds of the Center's clients. (Tr. 202, 286, Klepper.)

The Housing Center's Leadership In Affirmative Marketing To Black Homeseekers

The most egregious of the Realtors' misstatements is that the Housing Center's promises of outreach to blacks as well as whites "evaporated" and that the "only outreach to blacks undertaken by [the Center] was a newspaper advertisement" relating to the Southwest Suburban area. (Pet., pp. 13-14.)

In fact, the evidence is that the Center provided assistance to South Suburban apartment complexes in affirmative marketing to blacks as well as whites (Tr. 258-59, Klepper); that at its seminars for Realtors the Center suggested South Suburban locations appropriate for special outreach to black as well as white homeseekers (Tr. 218-26, Klepper; PX26; PX27); and that in one document used in such seminars the Center identified no fewer than 44 South Suburban areas for which special outreach was needed to minority homeseekers. (PX27.) The only Park Forest location listed for affirmative marketing to whites was Apache Street. (PX27.) Moreover, in lawsuits on behalf of black victims of discrimination, the relief sought by the Center and ordered by the courts has included affirmative marketing to minority homeseekers. (Tr. 300-01, Klepper.)[8]

[8] The Housing Center has not acquired any homes since its purchase of the Apache Street homes and has thus had no further opportunity to affirmatively market its *own* properties.

Racial Change On Apache Street

The Realtors assert that concerns about the threat of resegregation on Apache Street were based on "misperceptions." (Pet., p. 5.) In fact, the evidence demonstrated a dynamic and continuing process of racial change in which discriminatory practices by real estate brokers played an important role.

In 1970, the Forest Heights subdivision was built immediately north of the Apache Street area and most of the homes were sold to blacks. (NAR App., p. 71.) By 1972 the Forest Heights population was 99 percent black. (*Id.*) Racial turnover then occurred in the Beacon Hill subdivision, which adjoins both Forest Heights and the Eastgate subdivision of which Apache Street is a part. (*Id.*) During 1970-71 the school serving Beacon Hill, Forest Heights and Apache Street changed from 25 to 90 percent black, becoming the only racially identifiable school in Park Forest. (*Id.* at 71-72.) Racial steering then occurred on Apache Street itself—"brokers began to steer whites away from the area." (*Id.* at 72.) Although the situation did stabilize somewhat, 1980 census figures revealed that the Apache Street census block had reached more than double (56 percent) the black population of any other census block in its Eastgate subdivision. (*Id.*)

By the time this action was brought in 1983, Apache Street had had "very little white demand for housing for some time." (NAR App., p. 72.) Homeseeking traffic was "predominantly black." (*Id.*) The Executive Vice President of Petitioner Greater South Suburban Board of Realtors ("GSSBR"), who was also the chief operating officer of GSSBR's Multiple Listing Service, testified that the real estate industry in Park Forest was "knowledgeable" about Apache Street and its "makeup," and perceived that Apache Street was "a black block" on which whites were "underrepresented." (*Id.*)

Discriminatory Real Estate Practices In The South Suburbs

The Petition asserts (p. 4) that the District Court "did not identify any illegal or invidious activity currently underlying the process of racial change in the South Suburbs." In fact, as noted above, the District Court specifically found that in the 1970s "brokers began to steer whites away" from Apache Street. (NAR App., p. 72.)

Moreover, the Court found that right up to the time of the trial, "black realtors . . . tend to push listings in black or integrated neighborhoods to their prospects who are also mostly black," and that "White realtors push listings in white neighborhoods to their white customers . . ." (NAR App., pp. 68-69.) Such practices amount to steering. Hundreds of audit reports and other information relating to the South Suburban and Southwest Suburban Areas have demonstrated continuing discrimination, including unequal treatment and steering by real estate agents in those areas. (Tr. 6850, 6874-78, 7103-04, Orfield; MX33 ¶A5-6.) In one lawsuit filed by the Housing Center, 15 realty firms acknowledged "there were detrimental real estate practices that were operating in the market," and that "blacks were being discouraged from looking in all-white areas" and "whites . . . from looking in integrated areas." (Tr. 289-90, Klepper.) Witnesses for all parties acknowledged that continuing discrimination by real estate agents helps perpetuate the segregated "dual housing market" in the Chicago area. (*See, e.g.*, Tr. 1112-28, K. Williams; Tr. 6874-78, Orfield; Tr. 7321-25, Matthews; PX88; Tr. 296-300, 7455-56, Klepper; Tr. 4120-23, F. Williams.)[9]

[9] Reporting the results of research conducted by HUD, the Secretary of HUD announced, "The evidence clearly shows that discrimination is pervasive in American housing markets." (PX59 at i.) The official planning agency for Northeastern Illinois has stated

(Footnote continued on following page)

Ruling Of The District Court

The District Court held that the Apache Street AMP did not violate the Fair Housing Act, and that the Realtors lack standing to pursue their Section 1983 equal protection claim.

Although the District Court did state, as the Realtors point out (Pet., p. 13), that the Apache Street AMP had a "racially disparate impact", the Court explained that what it meant was that "[t]he purpose of [the AMP] was to increase the likelihood that whites would view the Apache Street properties in numbers beyond what would be expected if [only] normal marketing techniques were used." (NAR App., p. 80.) The Court made clear that by disparate impact it did not mean *adverse* impact; to the contrary, the Court explicitly found that the AMP "does not have the effect of a greater adverse impact on one racial group than another." (NAR App., p. 99.) As noted above, the Court found that the AMP did not have the purpose or effect of restricting anyone's access to housing or information about housing, but rather "served to increase, not decrease, the existing supply of housing information." (NAR App., p. 98.)

Ruling Of The Court Of Appeals

The Court of Appeals affirmed the District Court's rulings with respect to the AMP. In addition to finding that the Apache Street AMP contains none of the infirmities of programs that restrict housing rights through quotas or otherwise, the Court stated:

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[9] *continued*
that past discrimination has "limited housing choices for many people in Northeastern Illinois" and that "[r]acial discrimination still occurs. . ." (PX60 at 13, 29.) The Realtors' General Counsel acknowledged that we still deal today with the persisting effects of past discrimination. (Tr. 2207-23, North.)

> "We disagree with the Realtors' argument that increased competition among black and white home buyers for the same homes constitutes a violation of the Fair Housing Act. Instead, this is precisely the type of robust multi-racial market activity which the Fair Housing Act intends to stimulate." (NAR App., p. 29.)

The Realtors filed a Petition for Rehearing with a suggestion for rehearing *in banc*. No judge in active service requested a vote on the Petition, and all of the judges on the original panel voted to deny it.

SUMMARY OF ARGUMENT

The Petition does not meet any criterion set forth in Supreme Court Rule 10 (Part I below). The Realtors ask this Court to decide the merits of their equal protection claim even though the lower courts did not reach that issue and no court in the country has ever decided the constitutionality of an affirmative marketing plan. Thus, not only is there no conflict among lower courts, but there is not even a lower court decision on the equal protection issue for this Court to review. Issuing a Writ of Certiorari in such circumstances would be highly unusual.

Additional grounds for denial of the writ include the Realtors' failure to meet two threshold requirements for their Section 1983 claim. First (Part II below), as the Court of Appeals and the District Court ruled, the Realtors lack standing to assert the fair housing rights of minority homeseekers. It is difficult to imagine a contrary ruling in light of the evidence of past and continuing discriminatory practices by real estate brokers contributing to segregation in the South Suburbs and the District Court's twin findings that (1) real estate brokers engaged in steering on Apache Street, and (2) current real estate broker practices preserve segregated living patterns. (NAR App., pp. 68-69.)

Second (Part III below), there is no cognizable Section 1983 claim because the Housing Center did not act "under color of law" when it developed and implemented the Apache Street affirmative marketing plan.[10] The evidence is that the Housing Center initiated the proposal to conduct affirmative marketing on Apache Street, developed the AMP, and was jointly responsible with Realtor Motluck for the AMP's implementation and funding. Park Forest's peripheral involvement—approval of the Housing Center's proposal—does not under the cases make the Housing Center's conduct "state action."

Finally, apart from these threshold issues, the Realtors' argument that the AMP infringes equal protection rights of minority homeseekers is without merit (Part IV). Indeed, the Realtors' position, in essence, is the plainly indefensible one that homeseekers of one race have a constitutional right to prevent homeseekers of another race from receiving information about available housing. Unlike affirmative action quotas or preferences that the Court will scrutinize strictly, the AMP does not impose a burden; it does not reduce housing information to anyone or in any way diminish the housing opportunities of either black or white homeseekers. In fact, as the Court of Appeals found, the AMP sought to enhance equal opportunity by making it possible for members of both races to be aware of and thus able to compete for the Apache Street homes. Given its non-burdensome nature, the AMP should not be subjected to strict scrutiny (Part IV.A below).

Even if the AMP were strictly scrutinized, however, it would be upheld (Part IV.B below). The AMP was developed to serve the compelling interest of counteracting the effects of both past and continuing housing market discrimination, and was quite narrowly tailored: it was limited

[10] Having found that the Realtors lacked standing, neither the District Court nor the Court of Appeals reached this issue.

to three homes, terminated upon their sale, and had no adverse effect whatever on the rights of third parties. It thus meets all of this Court's strict scrutiny tests.

ARGUMENT

I. THE PETITION MEETS NONE OF THIS COURT'S RULE 10 CRITERIA.

The Petition does not meet any criterion of Supreme Court Rule 10. There is no conflict among lower courts, none of which has ever decided the issue the Realtors ask this Court to address: whether affirmative marketing complies with the Equal Protection Clause of the Fourteenth Amendment. The District Court and Court of Appeals did not reach the merits of the equal protection claim because they determined that the Realtors lack standing to press it. (NAR App., pp. 21, 104.) If this Court were now to examine the merits of that claim, it would, quite literally, be considering a matter of first impression. It would be highly unusual for this Court to examine the merits of an issue that has not been fully developed in the lower courts.

The issue the lower courts *did* decide in this case—the Realtors' standing to assert the rights of minority homeseekers—is a case-specific, fact-intensive issue; application of prudential standing considerations turns on the analysis of considerable record evidence, as discussed in the Court of Appeals opinion and Part II below.

II. THE REALTORS LACK STANDING TO ASSERT THE RIGHTS OF MINORITY HOMESEEKERS.

The Court of Appeals noted that the Section 1983 rights asserted in the Realtors' counterclaim "can only be classified as those of minority home buyers rather than those of the Realtors themselves." (NAR App., p. 18.) The Court then properly ruled that the Realtors do not fall within the exception to the prudential rule against third party

standing; each of the three factors set forth in *Caplin & Drysdale, Chtd. v. United States*, 491 U.S. 617 (1989), weighs against Realtor standing.

With respect to the first *Caplin* factor, "the relationship of the litigant to the person whose rights are being asserted" (491 U.S. at 623, n. 3), the Realtors clearly lack such a similarity of interest with black homeseekers as would make them an appropriate proponent of the latter's fair housing rights. The record abounds with evidence of real estate industry discrimination against minority homeseekers, both past and present. See Restatement of the Case, *supra*. The District Court specifically found that Realtors conduct themselves in a manner that preserves segregated housing patterns, and that real estate brokers had conducted illegal steering on Apache Street itself. (NAR App., pp. 68-69, 72.) Moreover, as the Court of Appeals recognized, the Realtors failed to identify a single black homeseeker whose equal protection rights were violated, and failed to demonstrate that black homeseekers' priorities were the same as the Realtors'. (NAR App., pp. 19-20.) The Realtor/black homeseeker relationship is thus a far cry from the attorney-client relationship in *Caplin* that justified third-party standing there.

As to the Realtors' contention (Pet., p. 29) that their interests and those of minority homeseekers are "deeply intertwined" because a broker implementing the Apache Street AMP would violate the NAR's Code of Ethics and the Fair Housing Act, (1) both courts below ruled (in rulings unchallenged here) that implementation of the Apache Street plan did *not* violate the Fair Housing Act (NAR App., pp. 29-30, 101), and (2) a hearing panel of the Illinois Association of Realtors, a branch of the NAR, ruled unanimously that Motluck's participation in the Apache Street AMP did *not* violate the Code of Ethics. (Tr. 495-96, Pearson; PX47.) *Village of Bellwood v. Dwivedi*, 895 F.2d 1521 (7th Cir. 1990), cited by the Realtors in this connection, does not address affirmative marketing.

With respect to the second *Caplin* factor, the ability of minority homeseekers to advance their own rights (491 U.S. at 623, n.3), the Realtors' unsupported assertions, that minority homeseekers are "practically precluded" from challenging the AMP because they may never learn that they have been the AMP's "victims" and because they may not be able to finance litigation (Pet., p. 29), fare no better.

As the Court of Appeals found (NAR App., pp. 20-21), the record provides no support for these speculations. First, the Realtors themselves—including the 25 black GSSBR members with predominantly black clienteles (Pet., p. 2)—were a ready source of information about the Apache Street plan for the many black homeseekers they encountered on a daily basis. Yet they were unable during years of litigation to "point to a single minority home buyer" who was or claimed to be harmed by the AMP. (NAR App., p. 19.)

Second, as to finances, the Realtors could have assisted any black homeseeker who wished to intervene in this suit. For all this record shows, as the Court of Appeals recognized (NAR App., p. 21), the absence of a minority counter plaintiff or intervenor may be attributable not to lack of information or financial resources but to a disinclination to attack affirmative marketing.

As to the final *Caplin* factor, "impact of the litigation on third party interests" (491 U.S. at 623, n. 3), the Court of Appeals correctly notes a lack of evidence that the Realtors' position is representative of that of minority homeseekers. (NAR App., pp. 20-21.)[11] Thus, the Realtors'

[11] The letter from an official of a local NAACP chapter which the Realtors cite in their Petition (p. 30) is a letter of public comment submitted to HUD concerning the Realtors' voluntary affirmative marketing agreement. The letter emphasizes that the author's concern is with "program[s] that impose burdens on blacks by limiting their free choice of housing" (DX437, Bates #N303240)—which is of course not the case with the Apache Street AMP.

actions would have an adverse effect on the interests of black homeseekers who wanted the AMP upheld "in order to promote developing and maintaining an integrated community in Park Forest." (NAR App., p. 21.) Moreover, because the AMP has no adverse effect on black homeseekers' access to housing, this case does not present the sort of compelling need to protect third party interests that was present in *Caplin*, where this Court found that the challenged forfeiture statute "may materially impair the ability of third persons . . . to exercise their constitutional rights." (491 U.S. at 623, n.3, citation omitted.)

III. THE HOUSING CENTER IS NOT A STATE ACTOR.

If the Housing Center is not a state actor, it is of course not subject to an equal protection claim under Section 1983. *See, e.g., NCAA v. Tarkanian*, 488 U.S. 179, 191 (1988); *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948). The Realtors nowhere address this fundamental issue explicitly. The state action requirement "assure[s] that constitutional standards are invoked only when it can be said that the State is *responsible* for the specific conduct of which the plaintiff complains." *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (emphasis in original). "Mere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment." (*Id.* at 1004-05.)

The Realtors quote a 1981 university report suggesting the Housing Center may be a state actor by virtue of a "close nexus" with Park Forest. (Pet., p. 3.) As *Blum* makes clear, however, the Realtors must show that Park Forest was responsible for the "*specific conduct* of which the plaintiff complains." 457 U.S. at 1004 (emphasis added). The report was written well over a year before Park Forest's sales of the Apache Street homes to the Hous-

ing Center and thus does not even address that "specific conduct."

As to "close nexus," the Center is a private, not-for-profit corporation founded in 1975 by the Cook County League of Women Voters. (Tr. 169-71, Klepper; PX 90.) Its funders include charitable foundations, individual members and donors, and federal, county and municipal governments, including a number of towns in addition to Park Forest. (Tr. 185-86, Klepper.) Its programs are carried out over a wide area that includes dozens of municipalities. (Tr. 171-72, Klepper.) There is no evidence that Park Forest exercised control over Housing Center activities. To the contrary, the District Court found:

> "The evidence presented at trial demonstrated that the [Housing Center] (and not the municipalities) has controlled and implemented most of the programs challenged." (NAR App., pp. 94-95.)

Nor did Park Forest play a role in Apache Street affirmative marketing that renders it responsible for that "specific conduct." As discussed in the Restatement of Facts, the evidence (including Bean's testimony) demonstrates that Park Forest did not request or require bidders on the Apache Street homes to propose affirmative marketing; that the idea for affirmative marketing on Apache Street originated with the Housing Center; that the Housing Center and Motluck, not Park Forest, developed the AMP; and that the Housing Center and Motluck were solely responsible for its implementation and funding.

The state action argument therefore stands or falls on the circumstance that Park Forest accepted the Housing Center's proposal to affirmatively market the Apache Street homes and that its Village Manager approved an AMP conceived, developed, funded and implemented solely by private parties. Park Forest's action was precisely the sort of "[m]ere approval of or acquiescence in the initi-

atives of a private party" that *Blum* states "is not sufficient to justify holding the state responsible . . . under the terms of the Fourteenth Amendment." *Blum v. Yaretsky*, 457 U.S. 991, 1004-05 (1982).

IV. THE APACHE STREET AFFIRMATIVE MARKETING PLAN DID NOT VIOLATE HOMESEEKERS' EQUAL PROTECTION RIGHTS.[12]

A. Apache Street Affirmative Marketing Did Not Impose A Burden On The Basis Of Race And Thus Is Not Subject To Strict Scrutiny.

Notwithstanding the Realtors' misleading rhetoric about "preference" and "manipulation", the AMP is nothing more than a means of providing *additional information* to homeseekers over and above the information provided in normal marketing. The Realtors do not challenge here the findings of the District Court, left undisturbed by the Court of Appeals, that special outreach to white homeseekers was to be carried out *in addition* to Motluck's normal marketing efforts, that Motluck was to use his best efforts to attract both minority and white homeseekers, and that the AMP had neither the intent nor the effect of restricting any group's information about, or access to, the Apache Street homes. (NAR App., pp. 73, 75, 95, 98, 101.)

Without reference to these features that make this case fundamentally different from most equal protection cases that have come before this Court, the Realtors assert that "Governmental programs based solely on race are inherently suspect." (Pet., p. 27.) However, unlike segregation of school children, and unlike strict contract set-aside programs, race-based employee layoffs, or medical school ad-

[12] In this Part IV we assume for the sake of argument that the Realtors have standing and that the Housing Center is a state actor.

mission quotas that this Court has addressed, affirmative marketing neither imposes a burden on the basis of race nor restricts anyone's choices. Rather than restricting housing options, affirmative marketing attempts to ensure that those options are more widely available. Careful review of this Court's decisions in this area reveals that this difference is critical.

Well before *Brown v. Board of Education*, 347 U.S. 483 (1954), this Court had little difficulty invalidating governmental classifications that imposed burdens based on race. See, *e.g.*, *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Indeed, the question in *Brown* was whether school segregation *burdened* black schoolchildren. When the Court concluded that it did, its decision that school segregation violated the Equal Protection Clause followed naturally.

Thus, it is unsurprising that when the Court has considered how strictly to review race-based classifications designed to remedy past discrimination against minorities, the burden such classifications imposed on whites has been a key analytical factor. Strict scrutiny of the contract set-aside programs in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), and *Fullilove v. Klutznick*, 448 U.S. 448 (1980), of the lay-off provision in *Wygant v. Jackson Board of Education*, 476 U.S. 267 (1986), and of the medical school admissions criteria in *Regents of University of California v. Bakke*, 438 U.S. 265 (1978), may all be traced directly to the burdensome nature of the racial classifications involved in those cases: it was the loss of the opportunity to compete for a government contract, or a teaching job, or a position in medical school, that moved the Court in those cases to apply strict scrutiny. See, *e.g.*, *Bakke*, 438 U.S. at 299 (Justice Powell: "When [political judgments] touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the *burden he is asked to bear* on that basis is precisely

tailored to serve a compelling governmental interest."); *Croson*, 488 U.S. at 493 (in subjecting set-aside program to strict scrutiny, plurality emphasized that "The Richmond Plan *denies certain citizens the opportunity to compete* for a fixed percentage of public contracts based solely upon their race").

Indeed, in *Bakke* Justice Powell distinguished two lower court decisions that had approved race-conscious busing programs—not based on a finding of prior discrimination—on the ground that in neither case was there a showing that the school board's pupil transportation plan "might threaten liberty or privacy interests," nor were white students "deprived of an equal opportunity for education"; that is, neither case involved the imposition of a significant burden. 438 U.S. at 300, n.39 (citation omitted).[13]

It is clear, moreover, that the enhancement of the ability of one group to take advantage of a particular right or benefit is not itself a "burden" on other groups that triggers strict scrutiny. In *Lau v. Nichols*, 414 U.S. 563 (1974), for example, the Court held that the San Francisco school system had violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its attendant regulations by failing to provide remedial English instruction for students of oriental ancestry who spoke no English. Justifying this result as a matter of equal protection, Justice Powell in *Bakke* wrote:

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[13] This theme is sounded many times in Justice Powell's *Bakke* opinion as he speaks of "classifications that rearrange burdens and benefits on the basis of race," 438 U.S. at 294, n.34; of "allocating benefits and privileges on the basis of skin color and ethnic origin," *id.*; of "individuals . . . excluded from enjoyment of a state-provided benefit," *id.* at 305; of "a classification [that] denies an individual opportunities or benefits," *id.*; of a "classification that imposes disadvantages upon persons," *id.* at 310; and of a state's "distribution of benefits or imposition of burdens," *id.* at 320.

> "[T]he 'preference' approved did not result in the denial of the relevant benefit—'meaningful opportunity to participate in the educational program'—to anyone else." 438 U.S. at 304.

Justice Powell similarly explained the Court's conclusion in *United Jewish Organizations v. Carey*, 430 U.S. 144 (1977), that New York's redrawing of its reapportionment plan to enhance the electoral power of some nonwhite voters who had been victims of unlawful dilution under the prior plan did not violate the Equal Protection Clause.[14] He wrote in *Bakke* that *United Jewish Organizations* was properly to be viewed as a case in which the remedy for discrimination encompassed measures to improve a disadvantaged group's ability to participate "without excluding individuals belonging to any other group from enjoyment of the relevant opportunity—meaningful participation in the electoral process." 438 U.S. at 305.

The lesson of cases like *Lau* and *United Jewish Organizations* is that race-based measures having the effect of enabling different racial groups to compete on equal terms, rather than putting members of one race at an advantage over members of other races, are viewed quite differently from race-based barriers to advancement and race-based denials of opportunity. This distinction comports with the underlying goals of the Equal Protection Clause: "equal opportunity" would be an empty promise indeed if governmental entities were effectively forbidden to take steps to enable members of all races to take ad-

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[14] In *UJO*, two Justices joined Justice White's view that the race-conscious redistricting did not violate the Equal Protection Clause because "there was no fencing out of the white population from participation in the political processes of the county, and the plan did not minimize or unfairly cancel out white voting strength" (430 U.S. at 165), and two other Justices (including Justice Powell himself) expressed the view that the redistricting was constitutional because it had neither "the purpose or the effect of discriminating against [the plaintiffs] on the basis of their race." *Id.* at 180.

vantage of the benefits and rights (such as education and voting) that government offers its citizens.

This conclusion is reinforced by a simple appeal to common sense. Race-conscious affirmative marketing may be analogized to a medical school program that does *not* consider race in admissions decisions but, in an attempt to encourage a diversity of applications, disseminates information about the school's non-discriminatory admissions policy to racial groups who, it is feared, might not otherwise know about the school's programs and policies, or feel welcome to apply. Any fair reading of the several opinions in *Bakke* compels the conclusion that such a program would not have been disapproved by any member of the Court. Nor can one believe that the Court would have struck down the school board's program in *Wygant* if all the board had done was ensure that groups historically unrepresented in the application process were informed of job openings and advised that they were welcome to apply.

These examples illustrate how far the Realtors' claims would reach: if affirmative marketing were held to trigger strict scrutiny, the validity of thousands of affirmative marketing plans at all levels of government would be thrown into doubt, as would be countless race-conscious information programs of all sorts, *e.g.*, those of public employers who, upon discovering that their normal information channels lead to overwhelmingly white applicant pools, take special steps to inform minority groups of the non-discriminatory availability of jobs. The Realtors offer no persuasive justification for such a Draconian holding.

In sum, affirmative marketing fits comfortably within the tradition exemplified by *Lau*, for—to paraphrase Justice Powell's explanation of *Lau* in *Bakke*—affirmative marketing does not result in denial of the relevant benefit, meaningful opportunity to participate in the competition for

available homes. Thus, because the Apache Street Plan did not impose a burden on the basis of race, strict scrutiny is inapplicable. It follows that the AMP passes equal protection muster, for affirmative marketing is obviously an appropriate method of fostering the important goals of combating discrimination in the housing market (see Section B below) and of "promoting stable, racially integrated housing." *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 111 (1979).

B. Apache Street Affirmative Marketing Served The Compelling Interest Of Avoiding "Passive Participation" In Discrimination And Was Narrowly Tailored To Promote That Interest.

Even if strict scrutiny were to be applied, the Apache Street Affirmative Marketing Plan would be upheld.

Recently, *Richmond v. Croson* made clear that a state actor has a compelling interest in ensuring that it lends no support to the discriminatory practices of someone else by "passive participation" in them. 488 U.S. at 492.[15] The Housing Center (assuming it to be a state actor) thus had a compelling interest in ensuring that in its disposition of the Apache Street homes it did not become a "passive participant" in the Chicago area's racially discriminatory dual housing market.

Affirmative marketing at Apache Street was an attempt to break out of that dual housing market. The record in this case abounds with evidence that the Chicago metropolitan housing market, including Apache Street and the

[15] Justice O'Connor's plurality opinion on this point was joined by Chief Justice Rehnquist and Justice White. Justice Marshall, joined by Justices Brennan and Blackmun, agreed that the interest described by the plurality was compelling. 488 U.S. at 536-37 (Marshall, J., dissenting). Thus, a majority of the Court accepted this principle.

South Suburbs generally, is instinct with housing discrimination. See Restatement of the Case, *supra*.[16] Moreover, the discrimination that the District Court found had occurred on Apache Street—the steering of whites away from that street—is precisely the type of discrimination that the AMP was designed to redress. In light of the evidence of the history, demographics and current home-seeking traffic on Apache Street and surrounding areas, which was carefully studied before the AMP was developed (Tr. 223-27, 234-36, 322, Klepper), the Housing Center had ample reason to believe that, without affirmative marketing, its disposition of the Apache Street homes would indeed render it a passive participant in a discriminatory housing market.

The Apache Street Plan was also narrowly tailored to achieve this goal. The Realtors argue that a race-conscious measure should "avoid[ ] unnecessary harm to innocent third parties" and should "not rely on an absolute racial preference." (Pet., p. 28.) It would be difficult to imagine a program that satisfied those criteria better than the Apache Street AMP. Because, as we have discussed, Apache Street affirmative marketing did not restrict anyone's housing choices in any way, it had *no* adverse impact on the rights of third parties. Nor did it create an "absolute racial preference"—or even a limited one—as is sometimes the case with affirmative action programs (*see, e.g., Wygant*, 476 U.S. at 282-83 (plurality opinion)), for *sales* decisions at Apache Street were made without regard to race.

Another important consideration is whether race-neutral measures could have been equally effective. See *Croson*,

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[16] Because the market in which homeowners and homeseekers in Park Forest operate is larger than Park Forest itself, it is not appropriate to isolate Apache Street or Park Forest from the rest of the local housing market. *See Hills v. Gautreaux*, 425 U.S. 284, 299-300 (1976) (discussing the "Chicago Housing Market Area").

488 U.S. at 507. Where the problem to be corrected is the channeling of blacks and whites into two separate housing markets, race-neutral measures would not be efficacious. The dual housing market means that blacks do not hear about housing opportunities in white neighborhoods, and whites do not hear about them in black or integrated neighborhoods; the obvious (and most unobtrusive) solution is to take steps to ensure that blacks and whites *do* hear about such opportunities.

Finally, with respect to whether the Apache Street AMP was sufficiently "temporary" (Pet., p. 28), it would again be difficult to imagine a more acceptable program. The AMP was extremely limited—applying to only three homes—and expired upon sale of the homes.

Because the Apache Street Plan was thus designed to promote a compelling governmental interest and was narrowly drawn to promote that interest, it met the requirements of strict scrutiny.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

ALEXANDER POLIKOFF
Counsel of Record
ROBERT L. JONES, JR.
BUSINESS AND PROFESSIONAL
PEOPLE FOR THE PUBLIC INTEREST
17 East Monroe Street, Suite 212
Chicago, Illinois 60603
(312) 641-5570

Attorneys for Respondent
South Suburban Housing Center

Of Counsel:

ROBERT C. JOHNSON
SONNENSCHEIN NATH & ROSENTHAL
233 South Wacker Drive, Suite 8000
Chicago, Illinois 60606

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APPENDIX

AFFIRMATIVE MARKETING PLAN[1]

Appendix made a part of agreement
dated June 13, 1983 between
South Suburban Housing Center (SSHC) and
Century 21, Host Realty, Ltd. (Realtor)

Purpose: The purpose of this plan is to assure that all clients of the Realtor are informed: (1) of available dwellings in locations throughout the south suburban housing market area of the Chicago SMSA; and (2) of available dwellings in neighborhoods to which persons of the client's race are not likely to be attracted without special outreach efforts.

1. Realtor shall use its best efforts to attract minority and majority groups persons to the dwelling at 26 Apache Street (the "Apache St. home").

2. SSHC and Realtor have considered the racial composition of the Chicago SMSA, the Village of Park Forest, the Eastgate subdivision in Park Forest and other demographic information, and agree that white homeseekers are not likely without special outreach efforts to be attracted to the Apache St. home.

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[1] PX17. An "Exclusive Agreement to Sell" was entered into between the Housing Center and Motluck for each of the three Apache Street homes, and to each an Affirmative Marketing Plan was attached as an appendix. PX15-17. The PX17 Agreement begins, "In consideration of your agreement to use your best efforts to find a purchaser for the real property described above and to implement the affirmative marketing plan attached as appendix I hereby grant to you for the term of 4 months from date hereof the exclusive right to sell the property . . ." The Agreement and the Plan for each of the three homes were substantially similar.

3. SSHC and Realtor shall agree upon the particulars of, and Realtor shall carry on, the following special outreach activities to attract white homeseekers to the Apache St. home:

A. Placement of advertisements in newspapers with a predominantly white circulation;

B. Distribution of information to selected rental developments; and

C. Distribution of information to selected employers.

Agreement upon such particulars is a condition to SSHC's commission obligation.

4. Realtor shall take the following steps in the following order with respect to all clients who enter its office for assistance:

A. Encourage each client to consider available dwellings in locations throughout the south suburban area, and inform each client that it (i) has information about available dwellings in such locations; (ii) will make such information available to the client; and (iii) will show any available dwelling the client chooses to see.

B. Inform each client of counseling available through the Homeseeker's Service of SSHC, and give each client a current SSHC brochure.

C. In the course of providing information about specific available dwellings, assure that each client is informed about available dwellings in neighborhoods in which persons of the client's race are not likely to be attracted without special outreach efforts.

Realtor shall not take any action which prohibits, restricts, narrows or limits the housing choice of any client on the basis of race.

5. Realtor shall maintain, and upon SSHC's request shall provide SSHC with, the following information:

A. An up-to-date traffic register for the Apache St. home, including: a list of all persons, by race, who

inquire of the Realtor as to the availability of the Apache St. home, whether or not through a non-listing broker, the source of each such inquirer's information about the Apache St. home; a list of all persons, by race, who are shown the Apache St. home, whether or not by a non-listing broker; and a list of all persons, by race, who apply to purchase such homes.

B. An up-to-date Equal Service Report form (Prospect Card), a copy of which is attached hereto as Exhibit A, for each client to whom Realtor provides a listing of any homes, wherever located. Realtor shall note on such form whether the client was informed about the Apache St. home.

C. A description of the special outreach efforts carried out pursuant to paragraph 3.

6. On or about April 15, 1983 Realtor shall make all of its staff persons engaged in the sale or rental of dwellings available for not less than nine hours at times and places to be agreed upon with SSHC, and SSHC shall provide training in affirmative marketing to such persons.

7. SSHC will require all nonlisting brokers and their agents who show the Apache Street homes to provide the information called for by paragraph 5A.

8. Realtor and SSHC shall evaluate the implementation of this affirmative marketing plan on a semi-monthly basis, or more often if mutually agreed. The plan may be modified from time to time, if mutually agreed, based on such evaluations.

Approved: Village of Park Forest

By: /s/ John Perry

South Suburban Housing Center

By: /s/ Christine C. Klepper by John R. Petruszak

Century 21, Host Realty, Ltd.

By: /s/ [Illegible Signature]